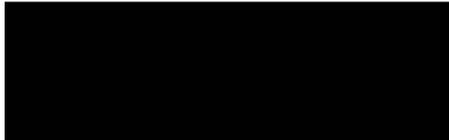


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U.S. Citizenship  
and Immigration  
Services

L2



FILE: MSC 02 064 64379

Office: SAN ANTONIO

Date: NOV 09 2006

IN RE: Applicant:



APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, San Antonio, and is now before the Administrative Appeals Office on appeal. The case will be remanded for further action and consideration.

The director concluded that the applicant failed to establish he resided in the United States during the requisite period of January 1, 1982 through May 4, 1988. In his August 4, 2004 decision, the director stated:

On April 14, 2003, this Service requested that you provide additional evidence. Specifically, you were asked to submit original receipts to establish that you were in the U.S. during years 1982 through 1988. This Service is also in receipt of your affidavits attesting that you were in the U.S. during years 1982 through 1988. However, the affidavits are not supported by documentary evidence, nor are they from your former employer attesting his/her willingness to come forward & give testimony. The evidence you submitted for years 1984 through 1988 do not contain your name nor do they contain your address. The affidavits submitted by Churches & other organizations are not sufficient in that they do not follow the instructions noted in 245.a(2)(d)(3)(v). As of this date this Service has not received additional supporting documentation. Additional time may not be granted.

On appeal, counsel contends that the applicant did not receive the April 14, 2003 request for further evidence, and that the director erred in denying the application solely because the applicant did not respond to a request he never received.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480

U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Although Citizenship and Immigration Services (CIS) regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

The AAO finds that the director made several errors in the adjudication of the application. First, the director failed to issue the applicant a Notice of Intent to Deny (NOID) before making his decision. 8 C.F.R. § 245a.20(a)(2) requires that when an adverse decision is proposed, an applicant for LIFE legalization must be notified of the intention to deny the application and the basis for the proposed denial, and granted a period of 30 days to respond to this notice. In this case, the applicant was issued a decision, but the record lacks any evidence that the director notified the applicant of the intention to deny the decision and the basis for the proposed denial, or granted the applicant 30 days to respond to this notice.

Second, while the record does contain a copy of a request for further evidence dated April 14, 2003, this request does not seek “original receipts” from the applicant as the director states in his decision. Rather, the request merely asks that the applicant submit Form I-690 Waiver of Ground of Excludability. Furthermore, the record also contains a statement from [REDACTED] of Quality Masonry, Inc., on the company's letterhead indicating that the applicant worked for the company from December 1983 through 1989. In the statement, [REDACTED] indicates a willingness to provide further testimony on the applicant's behalf. Finally, though one of the third party affidavits submitted by the applicant fails to list the applicant's address at the time the affiant was acquainted with him, the other third party affidavits in the record contain both the applicant's name and address.

The director did not specify any other deficiencies in the affidavits furnished, other than to say that affidavits were not “supported by documentary evidence.” Pursuant to *Matter of E-- M--*, supra, the director cannot refuse to consider affidavits, or any form of evidence relating to the 1981-88 period.

Accordingly, the matter will be remanded for the director to re-adjudicate the application based on all the evidence of record. If necessary, the director may issue a request for additional evidence of continuous residency during the requisite period of before January 1, 1982 through May 4, 1988. The director must afford the petitioner reasonable time to provide evidence pertinent to this issue, and any other evidence the director may deem necessary. If the director determines that the application should be denied, the director shall issue a NOID containing a detailed statement of the basis for the proposed denial, and the applicant must be granted a period of 30 days to respond to this notice. If, following this period, the director's final decision is adverse to the applicant, it shall be certified to this office.

**ORDER:** The matter will be remanded for the director to re-adjudicate the application based on all the evidence of record. If the director determines that the application should be denied, the director shall issue a NOID containing a detailed statement of the basis for the proposed denial, and the applicant must be granted a period of 30 days to respond to this notice. If, following this period, the director's final decision is adverse to the applicant, it shall be certified to this office.